



Comptroller General
of the United States

134308

Washington, D.C. 20548

Decision

Matter of: Telcom Systems Services, Inc.

File: B-257496

Date: September 30, 1994

DECISION

Telcom Systems Services, Inc. protests the award of a contract to Communications Service Group (CSG) under request for proposals (RFP) No. 663-221-94, issued by the Department of Veterans Affairs (VA) for telephone maintenance services at the VA Medical Center in Seattle, Washington.

We dismiss the protest.

Telcom's assertions that the VA improperly eliminated a requirement for manufacturer support and that the agency revealed Telcom's prices to its competitors in the course of the competition are untimely. The protester protested these same issues in a letter to the agency of February 11, 1994, to which the agency responded by letter of that same date, 4 days prior to the receipt of initial proposals. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1994), require that, when a firm has initially raised an issue with the contracting agency, any subsequent protest of the same issue be filed with our Office within 10 days of adverse action on the agency-level protest; Telcom's June 6 protest to our Office, raising these same issues, is untimely.¹

The protester also presents untimely challenges to several solicitation amendments. Telcom protests the agency's failure to provide minimum specifications for hardware, which resulted from amendment No. A001 to the solicitation, issued on January 28, 1994, 2 weeks prior to the receipt of initial proposals. Telcom also generally protests the

¹Further, with regard to Telcom's argument that the solicitation should have provided for manufacturer support, Telcom fails to state a basis of protest. Our role in reviewing bid protests is to insure that the statutory requirements for full and open competition are met, not to consider a protester's assertion that the needs of the agency can only be satisfied under more restrictive specifications than the agency believes necessary. Simula, Inc., B-251749, Feb. 1, 1993, 93-1 CPD ¶ 86.

issuance of solicitation amendments, which it asserts made it easier for CSG to compete and which it argues resulted in an auction.

Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1). This rule includes challenges to alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation. In such cases, the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330. Issues related to amendment No. A001 should have been raised prior to the receipt of initial proposals on February 15; protests of the subsequent amendments should have been raised, at the latest, prior to the receipt of best and final offers on May 20. Since Telcom did not protest until well after the closing dates established by those amendments, these grounds of protest are untimely.

Telcom also predicts that CSG will not be able to provide emergency service required by the solicitation. A determination that a bidder or offeror is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Thus, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Where, as here, there is no showing of possible fraud or bad faith, or that definitive responsibility criteria have been misapplied, we have no basis to review the protest.

Telcom initially appeared to challenge the evaluation of proposals, contending that it met all requirements of the solicitation at the lowest price. In fact, the record shows that CSG submitted a lower price than Telcom. Further, the solicitation provided for award not to the lowest-priced, technically acceptable offeror but to the offeror whose proposal was most advantageous to the government, considering company experience and demonstrated capability, personnel qualifications, and understanding of problem and project approach, all of which were to be of greater importance than price. Thus, even had Telcom submitted the lowest price, the assertion that it should have received the award solely because it offered a lower price than did the awardee fails to state a basis for protest, given that the

solicitation provided that award would be based on technical factors as well as on price. In negotiated procurements, unless the RFP so specifies, there is no requirement that award be based on lowest price. Stewart-Warner Elecs. Corp., B-235774.2, Dec. 27, 1989, 89-2 CPD ¶ 598.

Finally, the agency has furnished a complete report showing the basis for its conclusion that apart from its lower price, CSG submitted a superior technical proposal, and the protester has offered no evidence and made no argument that the evaluation was unreasonable or inconsistent with the solicitation criteria. Under these circumstances, we see no basis to object to the selection of CSG.

The protest is dismissed.

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